

WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP

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File No.: 01181.00146

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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|------------------------------|-----------------------------------|
| ----- | X |
| LORENZO ROGUCKI, | : Case No.: |
| | : |
| Plaintiff, | : |
| | : |
| -against- | : <u>NOTICE OF REMOVAL</u> |
| | : |
| DURO TRUCKING LLC, and ELWYS | : |
| CHAVARRIA-PALOMINO, | : |
| | : |
| Defendants. | : |
| ----- | X |

**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK:**

The Defendants, DURO TRUCKING LLC and ELWYS CHAVARRIA-PALOMINO (“hereinafter “Duro Trucking” and “Chavarria-Palomino”), by and through their attorneys, the law firm of WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP, as and for its notice of removal of this action pursuant to 28 U.S.C. §§1332(a), 1441 and 1446, petitions the Court and respectfully sets forth as follows:

INTRODUCTION

1. This action was commenced on or about May 13, 2022 with the filing of a Summons and Complaint, a copy of which is annexed hereto as **Exhibit “A”**.

2. As more fully explained below, this Court has original jurisdiction pursuant to 28 U.S.C. §1332(a), because this is a civil action between citizens of different States with an amount in controversy exceeding seventy-five thousand dollars (\$75,000), exclusive of costs and interest.

3. Under 28 U.S.C. § 1446(b), this Notice of Removal is timely because it has been filed within thirty (30) days of receipt of information that the case would be removable. Defendant, DURO TRUCKING LLC was served with a copy of the Summons and Complaint at its principle place of business at 575 N. Midland Ave., Saddle Brook, NJ 07663, on May 26, 2022. The defendant Elwys Chavarria-Palomino was served June 1, 2022 at his home at 34A Iozia Terrace, Elmwood Park, NJ 07407. Attached hereto as **Exhibit “B”** are copies of the plaintiff’s affidavits of service.

4. The Plaintiff claims in his Complaint unspecified money damages for personal injuries allegedly sustained in a two-car, motor vehicle accident that is said to have occurred on December 2, 2021. Plaintiff demands judgment against the Defendant in an amount in excess of the jurisdictional limits of all of New York’s lower courts (*see*, Exhibit “A”, at p. 10). At the heart of Plaintiff’s allegations is that Defendants negligently and carelessly owned, operated, maintained and/or controlled their motor vehicle, and this was the cause of the plaintiff’s damages (*see*, Exhibit “A”, at ¶ 34).

5. Venue is proper under 28 U.S.C. §§ 1441(a) and 105(a)(1) because the United States District Court for the Eastern District of New York is the federal judicial district embracing New York State Supreme Court, County of Kings, where the State court action was originally filed and was pending.

6. This action is one which may be removed under 28 U.S.C. §1441(b) in that, it is a civil action between citizens of different states, the matter in controversy allegedly exceeds the sum or value of \$75,000.00, exclusive of interest and costs and the removal is timely.

7. Removal of the State Court Action to this Court is proper under 28 U.S.C. §§1332(a), 1441(a) due to the diverse citizenship of the parties and an amount in controversy in excess of \$75,000 exclusive of interests and costs.

DIVERSITY OF CITIZENSHIP

8. Plaintiff is a citizen of the State of New York residing in Kings County (*see*, Exhibit “A”, Complaint, at ¶ 1). .

9. Defendant DURO TRUCKING LLC is a foreign corporation with its principal place of business in Saddle Brook, New Jersey. Defendant Chavarria Palomino is an individual residing and domiciled in Elmwood Park, New Jersey.

10. Removal of the State Court Action to this Court is proper under 28 U.S.C. §§1332(a), 1441(a) due to the diverse citizenship of the parties and an amount in controversy in excess of \$75,000 exclusive of interests and costs.

THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00

EXCLUSIVE OF COSTS AND INTEREST

11. In accordance with New York law, the Complaint does not set forth the amount in controversy exclusive of interest and costs (*see*, N.Y. CPLR § 3017; *see also*, Exhibit “A”, at ¶¶ 44, 45). Instead, the Complaint alleges that the Plaintiff seeks damages: (1) in an amount which

exceeds the monetary jurisdictional limits of any and all lower courts which would otherwise have jurisdiction herein, in an amount to be determined upon trial of this action”, and (2) “in an amount exceeding seventy-five thousand dollars” (*see*, Exhibit “A”, at ¶¶ 44, 45).

12. The maximum jurisdictional limit of lower courts having jurisdiction of this matter is twenty-five thousand dollars (\$25,000) (*see*, N.Y. Jud. Law § 190).

13. Accordingly, Defendant is informed and believes that the amount in controversy exceeds \$75,000.00. Plaintiff’s time to respond to Defendant’s demand to set forth the total damages to which the pleaders deem themselves entitled has not yet expired pursuant to N.Y. CPLR § 3017.

WHEREFORE, the Defendants DURO TRUCKING LLC and ELWYS CHAVARRIA-PALOMINO respectfully pray that this action now pending in the Supreme Court of the State of New York, County of Kings proceed in the United States District Court for the Eastern District of New York as an action properly removed thereto, together with such other and further relief as this Court may deem just, proper and equitable.

Dated: White Plains, New York
June 27, 2022

**WILSON ELSEER MOSKOWITZ
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Joseph A.H. McGovern /S/

By: _____
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